Decision for dispute CAC-UDRP-107349

Case number	CAC-UDRP-107349
Time of filing	2025-02-25 13:44:27
Domain names	thyssenkruppo.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	thyssenkrupp AG- thyssenkrupp Intellectual Property GmbH

Respondent

Name	Olutoyin Adeoye

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of multiple trademarks in multiple jurisdictions registered under the WIPO Madrid protocol for the term thyssenkrupp in both the upper and lower cases, including:

ThyssenKrupp Reg. 29.04.1999 Exp. Date 29.04.2029
822 Basic registration
DE, 29.04.1999, 398 60 667.6/06
834 Designation(s) under the Madrid Protocol by virtue of Article 9sexies
AL - AM - AZ - BA - BY - CH - CN - CU - DZ - EG - HR - KE - KG - KP - KZ - LI - LR - MA - MC - MD - ME - MK - MN - MZ – RS - RU - SD - SL - TJ - UA - VN

FACTUAL BACKGROUND

The Complainant is an international industrial and technology group with around 98,000 employees. In the fiscal year 2023/2024, the company generated sales of 35 billion EUR in 47 countries. Its business activities are bundled into five segments: Automotive Technology, Decarbon Technologies, Materials Services, Steel Europe and Marine Systems. With extensive technology know-how, businesses develop innovative solutions for the challenges of the future. Around 3,900 employees work in research and development worldwide. They are mainly focused on climate protection and the energy transition, the digital transformation in industry, and the mobility of the future.

The Complainant further states that its patent portfolio currently includes approximately 16,900 patents and utility models. thyssenkrupp is pursuing ambitious climate protection targets and actively optimizing its own energy and climate efficiency. At the same time, the Group is supporting its customers with advanced products to help them achieve their climate targets, thus playing a key role in advancing the green transformation. As a publicly listed company, thyssenkrupp is part of the MDAX index. thyssenkrupp shares are traded on the Frankfurt Stock Exchange (ticker symbol: TKA) and as American depositary receipts (ticker symbol: TKAMY) in the USA.

The Complainant also maintains a strong online presence and operates its main webpage at <www.thyssenkrupp.com>, which it

registered on December 5, 1996. It has numerous other domain names for multiple products and countries.

The disputed domain name <thyssenkruppo.com> was registered on February 3, 2025 (the “Disputed Domain Name”).

PARTIES CONTENTIONS

COMPLAINANT

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. It states in particular that the Respondent is using the domain name in bad faith for fraudulent purposes. Principally, the Respondent's bad faith in registering and using the disputed domain name "thyssenkruppo.com" is evident through its malicious activities, which have directly harmed the Complainant and its customers. Specifically, the Respondent has used an email address linked to the disputed domain to perpetrate a phishing scheme targeting the Complainant's client. The fraudulent email impersonated the Complainant’s legitimate business operations. It intentionally misrepresented itself as the Complainant, exploiting the goodwill and reputation of the "thyssenkrupp" trademark to deceive and defraud.

In particular, such actions constitute bad faith registration and use of the disputed domain name as the Respondent has intentionally disrupted the Complainant's business and attempted to confuse consumers for its financial gain. This clear intent to exploit the Complainant's trademark for fraudulent purposes not only undermines the legitimate interests of the Complainant but also jeopardizes the trust and security of its clients. Given the Respondent’s deliberate and harmful conduct, the transfer of the disputed domain name to the Complainant is warranted to prevent further abuse.

The Complainant also states that Respondent's conduct emphasizes the fact that the Respondent had knowledge of the Complainant’s well-known trademarks, company names and domains, when choosing the disputed domain name. This is because the Complainant is not only the owner of the aforementioned trademark rights, which exist and are used worldwide, but also the name "thyssenkrupp" is legitimately used by a large number of other companies in the Group and is part of various other legitimate domains.

RESPONDENT

Respondent has not appeared in this proceeding, but a person representing himself as a website designer who registers domain names for clients and designs websites filed an email. He states that this “might be one of my clients' domains which I don't know much about, and why the domain is under dispute. I only registered the domain/hosting for them.”

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

Paragraph 5(c)(i) of the Rules instructs the respondent to: "respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ..." Notwithstanding Respondent's default, however, Complainant is not relieved from the burden of establishing its claim. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0, § 4.3: "Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true." However, if a complainant's adduced evidence supports any element of the Policy, a respondent has an opportunity to contest the contention that its registration of the challenged domain name was unlawful.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations and evidence pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. website-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all [reasonable] allegations of the Complaint.").

Here, the Respondent has not availed itself of contesting the evidence and the email filed by the web designer not on behalf of the Respondent but explaining his relationship with the Respondent is not responsive to the complaint. Thus, for the reasons further explained the disputed domain name shall be transferred to the Complainant's account.

Identical or confusingly similar, §4(a)(i).

It is well accepted that the first element functions primarily as a standing requirement. At the threshold, it is necessary only to consider "whether a domain name is similar enough in light of the purpose of the Policy to justify moving on to the other elements of a claim for cancellation or transfer of a domain name." The Panel in Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party, WIPO Case No. D2000-1415 explains that "numerous prior panels have held [the purposes of the Policy are satisfied] when a domain name wholly incorporates a complainant's registered mark." Similarly, Magnum Piering, Inc. v The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525.

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 1.7. The Complainant has demonstrated that it has registered trademark rights in multiple jurisdictions to the term THYSSENKRUPP in both lower and upper case. This is sufficient to establish the first requirement of this element, viz: that the Complainant has a trademark in which it has a right.

Having established that element of the Policy the next question is whether the disputed domain name is identical or confusingly similar to Complainant's mark. A side-by-side comparison of the disputed domain name and the THYSSENKRUPP trademark indicates that the disputed domain name adds the letter "o" following the final "p" of the mark to form the confusingly similar disputed domain name <thyssenkruppo.com>. The Panel agrees with the Complainant that this "does not significantly alter the appearance, pronunciation, or overall impression of the Mark." In all respects, the disputed domain name is virtually identical to the Complainant's mark. See Bloomberg Finance L.P. v. Nexperian Holding Limited, Case No. FA 782013 (Forum June 4, 2018) (holding that where the "relevant trademark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.")

Panelists generally disregard the top-level suffixes as functional necessities; thus, the top-level extension is irrelevant in determining the issue under the first requirement of the Policy. See Rollerblade, Inc. v. Chris McCrady, WIPO Case No. D2000-0429. The distinctive portion of the disputed domain name is thus the textual string to the left of the gTLD designator.

Having demonstrated that it has trademark rights and that the disputed domain name is confusingly similar to Complainant's trademark the Panel finds Complainant has satisfied Para. 4(a)(i) of the Policy.

Rights and legitimate interests, Para. 4(a)(ii)

Under paragraph 4(a)(ii) of the Policy, a complainant has the burden of establishing that a respondent lacks rights or legitimate interests in respect of the disputed domain name, but this burden is light. It is sufficient in the first instance for the Complainant to allege a prima facie case, and if the evidence presented is conclusive or yields a positive inference that the Respondent lacks rights or legitimate interests, the burden shifts to the Respondent to rebut that presumptive proof.

This concept of shifting burdens is clearly explained in Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case Number D2003-0455 in which the Panel held that "[s]ince it is difficult to prove a negative ... especially where the Respondent, rather than complainant, would be best placed to have specific knowledge of such rights or interests—and since Paragraph 4(c) describes how a Respondent can demonstrate rights and legitimate interests, a Complainant's burden of proof on this element is light."

Once the complainant makes such prima facie showing, "the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence rebutting the prima facie case or showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP," Malayan Banking Berhad v. Beauty, Success & Truth International, WIPO Case No. D2008-1393. Finally, "in the absence of direct evidence, complainant and the panel must resort to reasonable inferences from whatever evidence is in the record," Euromarket Designs, Inc. v. Domain For Sale VMI, WIPO Case No. D2000-1195.

Once the burden shifts, the Respondent has the opportunity to demonstrate its right or legitimate interest by showing the existence of any of the following nonexclusive circumstances:

(i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

If a respondent proves any of these circumstances or indeed anything else that shows it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the respondent must succeed. However, where a respondent fails to respond, the panel must assess the record before it.

Here, the Respondent has not appeared to rebut the Complainant’s offer of proof. Its choice of the disputed domain name is confusingly similar indeed virtually identical to the trademark. Complainant has shown that Respondent is not authorized to register the disputed domain name, and does not have any business relationship with the Complainant that would support a defense under para. 4(c)(i) of the Policy, and is not making a “legitimate noncommercial or fair use of the domain name.”

Further, the evidence in the record is conclusive that the Respondent is a certain Olutoyin Adeoye with an address in Benin, Nigeria. He is not commonly known under the disputed domain name. See Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, Case Number FA1804001781783 ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 114(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy para. 4(c)(ii)"); Amazon Technologies, Inc. v. Suzen Khan / Nancy Jain / Andrew Stanzy, Case Number FA 1741129 (finding that respondent had no rights or legitimate interests in the disputed domain names when the identifying information provided by WHOIS was unrelated to the domain names or respondent's use of the same).

Since there is no proof otherwise, the record supports the conclusion that the Respondent lacks any right or legitimate interest as measured by the three circumstances of paragraph 4(c). See Deutsche Telekom AG v. Britt Cordon, WIPO Case No. D2004 -0487 (holding that "once a complainant establishes a prima facie case that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the Respondent. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP"). Similarly in Malayan Banking Berhad, supra. (holding that " [i]f the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.").

According to “WIPO Jurisprudential Overview 3.0” section 2.5.1,"Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner."

The Complainant has adduced sufficient evidence to establish that the Respondent impersonates the Complainant to take

advantage of it, fraudulently. As highlighted in “WIPO Jurisprudential Overview 3.0” section 2.13.1, Impersonation falls in the category of illegal activity and can never confer rights or legitimate interests on a respondent.”

Accordingly, as the Panel finds that the Complainant has demonstrated that the Respondent lacks rights or legitimate interests in the disputed domain name it has satisfied Paragraph 4(a)(ii) of the Policy.

Registered and Used in Bad Faith, Para. 4(a)(iii)

Having determined that the Respondent lacks rights or legitimate interests, the Complainant must then prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith. The consensus is expressed in WIPO Overview 3.0, section 3.1.4. is that "the mere registration of a domain name that is identical or confusingly similar . . . to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

Paragraph 4(b) of the Policy sets out four nonexclusive circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive.

The four specified circumstances are:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the site or location.

The Panel finds that the Complainant has shown that the Respondent registered and is using the disputed domain name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) as well as within the larger notion of abusive conduct. The Panel finds that the Complainant has adduced more than sufficient evidence to prove the Respondent's bad faith based on the foregoing considerations.

The registration of a domain name virtually identical to the Complainant’s mark is clearly intended to attract Internet users seeking to reach the Complainant's website and creating a "likelihood of confusion with the complainant's mark." Where the facts demonstrate an intent to capitalize on an owner's mark in the manner in which the Complainant describes and which is supported by proof in the record, the registration is prima facie abusive. Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass, WIPO Case No. D2019-2803 (<investease.com>. "It is clear that where the facts of the case establish that the respondent's intent in registering or acquiring a domain name was to unfairly capitalize on the complainant's nascent . . . trademark, panels have been prepared to find the respondent acted in bad faith. "). See WIPO Overview 3.0, section 3.8.2.

Accordingly, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and that its conduct firmly supports that the registration of the disputed domain name was abusive. Having thus demonstrated that the

Respondent registered and is using the disputed domain name in bad faith, the Complainant has also satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **thyssenkruppo.com**: Transferred

PANELLISTS

Name	**Gerald Levine Ph.D, Esq.**

DATE OF PANEL DECISION 2025-03-24

Publish the Decision